IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 488 OF 2004

Ramchandra Bhau Kute. ... Appellant.

Versus.

Parvati Sahadu Walhekar. ... Respondent.

Shri R.S.Apte with Shri M.V.Limaye for the Appellant.

Shri S.V.Sadavarte for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 10th March, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The Second Appeal is by unsuccessful Plaintiff. The case of the Appellant is that his father executed a registered sale deed in respect of the suit property in favour of the Respondent and the Respondent had agreed to reconvey the property on the repayment of the consideration. According to the Appellant-Plaintiff amount was repaid and thus he continued to be in possession. Admittedly reconveyance is not executed by the Respondent in favour of the Appellant. The suit is not filed for enforcing the alleged agreement of reconveyance. The suit is for declaration that the Appellant is the owner and injunction is claimed on the basis of the title as owner. An attempt is made to take up the plea of adverse possession.

2. Admittedly the Respondent is the owner of the suit

property on the basis of the registered conveyance executed by the father of the Plaintiff. In this view of the matter the Appellant cannot claim any right in respect of the suit property. As the injunction is claimed on the basis of title as owner, the Appellant cannot be entitled to relief of injunction.

3. A grievance is made that the Appellant Court has not framed point for determination as required by Order XLI Rule 31 of the Code of Civil Procedure, 1908. A perusal of the Judgment of the Appellate Court shows that all issues arising on merits have been considered and oral and documentary evidence have been scanned by the Appellate court. The findings have been recorded on all aspects. Thus failure to frame proper points for determination has not caused any prejudice to the parties.

4. No substantial question of law arises and the Second Appeal is dismissed with no order as to costs.

Judge.